



CHESAPEAKE BAY FOUNDATION

*Resource Protection
Environmental Education*

September 26, 2000

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Mr. Mark Gmitro

Institute for Water Resources

7701 Telegraph Road, Casey Bldg.

Alexandria, VA 22315

Re: Corps Listening Sessions

Dear Mr. Gmitro:

On behalf of the Chesapeake Bay Foundation (CBF), I wish to thank you and the Army Corps of Engineers (Corps) for providing this opportunity to discuss a number of key issues regarding protection and enhancement of the nation's water resources. The Corps remains a key player in restoration and maintenance of the Chesapeake Bay's water quality and living resources and, as such, these listening sessions provide a unique opportunity to focus on obstacles to achieving that goal. I wish to provide the following comments on behalf of CBF and apologize for not providing these at the Williamsburg, Virginia listening session. An unscheduled summons to sit on a local grand jury prohibited me from attending the session.

The Chesapeake Bay remains one of the nation's most valued natural resources, serving up millions of pounds of seafood, providing a major hub for shipping and commerce, supplying significant natural habitat for many fish and wildlife species, and offering a wide variety of recreational opportunities for residents and visitors. Several decades ago, federal, state, and local partners joined in a landmark effort to improve the health of the Chesapeake Bay, culminating in signature of the Chesapeake Bay Agreement. The Corps plays a unique role in furthering these state, federal, local, and private efforts to improve the Chesapeake Bay.

Let me provide you with a brief background on CBF and our mission. CBF is the largest regional private, nonprofit conservation organization working to "Save the Bay." Our mission is:

Joseph H. Maroon
Virginia Executive Director

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Pennsylvania Office: The Old Water Works Building, 614 North Front Street, Suite G, Harrisburg, PA 17101 • 717-234-5550, fax 717-234-9632

"to restore and sustain the Bay's ecosystem by substantially improving the water quality and productivity of the watershed, with respect to water clarity, resilience of the system, and diversity and abundance of living resources, and to maintain a high quality of life for the people of the Chesapeake Bay region."

Our work is achieved through a number of programs including student and adult education, resource advocacy, land conservation, and habitat restoration. We have monitored the Corps' wetland regulatory program for many years, through commenting and litigating on specific permit decisions to conducting studies of various aspects of the program. Additionally, CBF has recently partnered with Ducks Unlimited in an effort to restore thousands of acres of wetlands within the Bay watershed.

The following comments focus on the adequacy of the Norfolk District's program in protecting and appropriately managing wetland resources in Virginia's Bay watershed.

The Norfolk District has confronted many difficult issues, the most prominent of which is a wetlands permit application by the City of Newport News to construct a water supply reservoir in King William County, Virginia and a water intake structure on the Mattaponi River. The District's preliminary decision in this matter to deny the permit application reflects recognition of the project's significant adverse environmental and social impacts deserves special recognition. CBF appreciates the efforts and decisions of Colonel Carroll, the District engineer, and his staff, in particular Ms. Pamela Painter, the project manager, in review of this project.

While the King William project provides a shining example of the good work of the Norfolk District, there remain certain significant areas of concern that, if addressed, would further greatly the success of the Corps in its efforts to restore and protect the environment and reduce the economic and social costs of floods. Despite recent analysis completed by the Corps Headquarters in preparation of nationwide permits designed to substantially reduce the long-term adverse impact of these permits on our nation's wetlands, the Norfolk District has moved forward with a regional permit proposal that lacks many of the environmental safeguards provided in the national proposal. The table and discussion provided below addresses a number of key differences between the nationwide permits and the Norfolk District's regional permit proposal.

<u>Permit Requirements</u>	<u>Norfolk District Regional Permit</u>	<u>Corps Nationwide Permits</u>
Upper Limit	1 acre and 500 linear feet of stream bed (RP 1, 2, 4)	0.5 acre and 300 linear feet of stream bed (NWP 39, 43, 42)
PCN Limit	0.25 acre (RP 1, 2, 4)	0.10 (NWP 39, 43, 42)
100-Year Floodplains	No restrictions	Restricts use of NWPs in the 100-year floodplain, flood fringe, and floodway
Riparian Buffers	No requirements	Required to the maximum extent practicable
Compensatory Mitigation	Not required for impacts less than 0.25 acre (RP 1, 2, 4)	Required for impacts greater than 0.10 acre (NWP 39, 43, 42)
Post-Project Notification	Not required	Required for NWP 39 for projects impacting less than 0.10 acre

- The Norfolk District regional permit authorizations fail to exclude wetlands located within 100-year floodplains, an important protection provided under the nationwide permits. Despite support for floodplain restrictions from Corps Headquarters and the U.S. Environmental Protection Agency, the Norfolk District proposes to authorize regional permits without this critical safeguard. By limiting application of the nationwide permits within floodplains, the Corps Headquarters has rightfully acknowledged the importance of such proactive efforts to avoid impacts to the flood storage capacity of our floodplains. In fact, the Corps Headquarters identified the need for the floodplain restriction in the preamble to their national proposal: "The Corps of Engineers is very concerned with the loss of life and property resulting from unwise development in the floodplain. We believe that the changes to the NWP [nationwide permit] program published today will play an important role in reducing damages associated with development in the floodplain" (Federal Register, Vol. 65, No. 47, P. 12880).
- The Norfolk District's regional permit proposal authorizes twice the wetland impact than the Corps' nationwide permits; in doing so, it fails to comply with Clean Water Act (CWA) provisions mandating only minimal individual or cumulative impacts through general permits. The Corps Headquarters has indicated that the one-half and one-tenth acreage thresholds under the nationwide permits are required to "ensure that these NWPs [nationwide permits] still authorize only activities with minimal individual and cumulative adverse effects on the aquatic environment" (Federal Register, Vol. 65, No. 47, P. 12825). Therefore, the District's regional permit proposal, omitting the environmental safeguards found in the Corps

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nationwide permits, will continue a regrettable legacy of cumulative impacts and net loss of wetlands in Virginia.

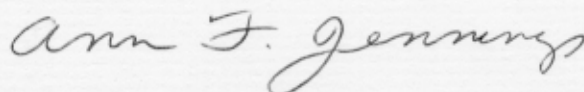
- Additional essential environmental safeguards found in the nationwide permits are omitted from the regional permit proposal. These safeguards include: 1) requiring an individual permit for impacts greater than 300 feet (the regional permit authorizes impacts up to 500 linear feet); 2) requiring buffers to protect water quality; 3) requiring compensatory mitigation for permanent conversion of forested wetlands to scrub-shrub/emergent wetlands for utility development; and, 4) requiring notification of impacts less than one-tenth acre under NWP #39 ("Residential, Commercial, and Institutional Development").

Contradictory, and less protective, provisions in regional permits like those discussed herein hamper the Corps efforts in restoring and protecting the environment and reducing the economic and social costs of floods. CBF continues to recommend that District regional permits, at a minimum, provide for the equivalent protections found within the nationwide permit program. Weakened regional permits will limit the Corps and others from reaching national and Chesapeake Bay goals of a no net loss of wetlands.

In addition, Virginia finds itself in the unique position of developing a regulatory program that will dramatically improve wetland protection while, at the same time, substantially improve the current regulatory process. Virginia's 2000 General Assembly passed legislation that provides for development of a comprehensive nontidal wetland management program; that legislation became law July 1, 2000. Virginia's Department of Environmental Quality (DEQ) is currently developing the regulatory program, which will provide the basis for seeking a State Programmatic General Permit (SPGP). CBF encourages the Corps to work cooperatively with the DEQ to ensure and expedite development of a SPGP that provides enhanced protection and improved management and efficiency.

Again, CBF appreciates this opportunity to comment. If you have any questions regarding CBF's concerns, please contact me at (804) 780-1392.

Sincerely,



Ann F. Jennings
Virginia Staff Scientist

cc: Joseph H. Maroon, Virginia Executive Director, Chesapeake Bay Foundation